



**C. JURISDICTION & VENUE**

4. Subject matter jurisdiction in this case is properly conferred in the Court pursuant to R.I. Gen. Laws §§ 8-2-13 and 42-17.1-2(21)(vi).

5. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on Defendant's ownership of real property within the State of Rhode Island.

6. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

**D. FACTS**

7. The subject property (the "Property") is located at 27 Breach Drive in Westerly, Rhode Island and is also identified by the Town of Westerly as Assessor's Plat 156, Lot 35.

8. The Property is a single-family dwelling with four bedrooms and one and half bathrooms (the "Dwelling").

9. The Defendant, Joseph Dyer, Jr., owns the Property.

10. On May 29, 2019, the RIDEM issued a NOV alleging violations of Rhode Island General Laws and the OWTS Regulations for the failure to properly abandon a cesspool located within 200 feet of the inland edge of a shoreline bordering a tidal water area.

11. The NOV was delivered to the Defendant at his residence on or about June 3, 2019 as evidenced by the United States Postal Service.

12. The Defendant did not request an administrative hearing to contest the NOV.

13. Among other terms, the NOV ordered the Defendant to:

- a. To connect to public sewers, if available, within 30 days, and properly abandon the cesspool in accordance with Part 6.56 of the OWTS Regulations.

- b. If public sewers are not available, retain a licensed on-site wastewater treatment system (“OWTS”) designer and have the licensed designer submit a formal application and plan to RIDEM to replace the cesspool in accordance with the OWTS regulations within 30 days.
- c. Complete all work in accordance with the approval provided by RIDEM within 120 days of RIDEM’s approval of the application as evidenced by the issuance of a Certificate of Conformance issued by RIDEM.
- d. Pay an administrative penalty of Five Thousand (\$5,000.00) Dollars.

14. To date the Defendant has failed to properly abandon the cesspool located on the Property and to pay the administrative penalty.

15. Because the Defendant failed to request an administrative hearing, the NOV and associated administrative penalty contained within (pursuant to R.I. Gen. Laws §§42-17.1-2(21)(vi) and 42-17.6-4(c)) automatically became a Compliance Order enforceable in Superior Court.

16. The Property continues to be owned by the Defendant.

17. As of the date of this Complaint, the Defendant has failed to fully comply with the terms of the Compliance Order. Such non-compliance constitutes a serious environmental and public health hazard to the Defendant, neighbors, and the general public.

### **COUNT I**

*(Violation of a Compliance Order)*

18. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 17 above.

19. The NOV issued to the Defendant by the RIDEM on May 29, 2019 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

20. In accordance with R.I. Gen. Laws § 42-17.1-2(21)(i), the NOV issued on May 29,

2019 notified the Defendant of the facts that gave the Department reasonable grounds to believe that a violation of law had occurred; of the statutes and/or regulation(s) violated; and of the Defendant's right to request an administrative hearing before the Department's Administrative Adjudication Division by filing a request for hearing with twenty (20) days of service of the NOV.

21. Defendant, by failing to appeal the issuance of the NOV, is deemed to have waived his right to an adjudicatory hearing resulting in the NOV automatically transforming into a Compliance Order of the RIDEM.

22. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.

23. As of the date of filing this Complaint, the Defendant has failed to comply with the provisions of the Compliance Order in that he has failed to properly abandon the cesspool on his property and pay the administrative penalty.

## **COUNT II**

### *(Violation of a Compliance Order Administrative Penalties)*

24. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 23 above.

25. The NOV issued to the Defendant on May 29, 2019 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

26. The administrative penalty assessed in the NOV issued to the Defendant on May 29, 2019 was assessed pursuant to R.I. Gen. Laws § 42-17.6-3.

27. In accordance with R.I. Gen. Laws § 42-17.6-3(a) the aforementioned NOV notified

the Defendant of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; the amount of the assessed administrative penalty for each violation; of the Defendant's right to request an administrative hearing before the RIDEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that his failure to request a hearing in the time prescribed would result in the associated administrative penalty proposed becoming final; and the manner of payment thereof.

28. Pursuant to R.I. Gen. Laws § 42-17.6-4(c) and § 42-17.1-2(21)(i) Defendant, by failing to appeal the issuance of the NOV and the proposed administrative penalty, is deemed to have waived his rights to an adjudicatory hearing resulting in the NOV automatically transforming into a Compliance Order of the RIDEM and the proposed administrative penalty becomes final.

29. Pursuant to R.I. Gen. Laws § 42-17.1-2(21)(vi), a Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Compliance Order rests with the Defendant.

30. Defendant has failed to pay the administrative penalty assessed in the May 29, 2019 NOV.

31. Each day of non-compliance represents a continuing violation of Rhode Island General Laws and the OWTS Regulations and constitutes a separate offense subject to separate administrative penalties.

**WHEREFORE**, Plaintiff, Terrence Gray, in his capacity as Acting Director of the Rhode Island Department of Environmental Management, hereby requests that Judgment be entered in favor of the Plaintiff and that the Plaintiff be granted the following relief.

- (a) Preliminary and Permanent Injunctive Relief, ordering the Defendant to immediately vacate the Dwelling and to keep the Dwelling vacant until such

time as the Defendant properly abandons the cesspool in accordance with the OWTS regulations and a new OWTS is installed as evidenced by the issuance of a Certificate of Conformance by the RIDEM to the Defendant;

- (b) Permanent Injunctive Relief, ordering Defendant to submit to the RIDEM within thirty (30) days a written proposal for the abandonment of the cesspool and the installation of a new OWTS, that must include:
1. Submittal of an application and plan for a new OWTS to RIDEM in accordance with the OWTS Regulations;
  2. The application and plan (the "Application") shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Defendant either granting formal approval or stating the deficiencies therein. Within 14 days of receiving a notification of deficiencies in the Application, the Defendant must submit to the RIDEM a modified proposal or additional information necessary to correct the deficiencies;
  3. Once the Application is approved, the Defendant shall commence work on the project in accordance with the method approved by the RIDEM within 20 days of approval and complete such work within 120 days of said approval.
- (c) Permanent Injunctive Relief, if the Defendant fails to abide by the terms of paragraphs (a) and (b) and its subsections, as stated immediately above, including following the time requirements, then the Defendant is to ensure that the Dwelling remains vacant until such time that: (1) the cesspool is properly abandoned in accordance with the OWTS Regulations and (2) a new OWTS is installed to the satisfaction of the RIDEM as evidenced by the issuance of a Certificate of Conformance; and
- (d) Award of Administrative Penalty, ordering Defendant to pay the full amount of Five Thousand (\$5,000.00) Dollars to the Plaintiff which is the amount of the administrative penalty assessed in the NOV of May 29, 2019; and
- (e) Such further relief as this Court deems just and equitable in accordance with the facts of this case.

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**VERIFICATION**

I, Stephen Tyrrell, Supervising Environmental Scientist of Rhode Island Department of Environmental Management's Office of Compliance and Inspection and an authorized representative of the Director, first being duly sworn upon oath, hereby state that the facts contained in this Complaint to the best of my knowledge and belief, true and accurate.

For the Director,

By: \_\_\_\_\_  
STEPHEN TYRRELL  
Supervising Environmental Scientist  
Office of Compliance and Inspection  
Dated: January \_\_, 2022.

**STATE OF RHODE ISLAND  
PROVIDENCE COUNTY**

Subscribed and sworn to before me this \_\_\_\_ day of January, 2022.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:

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Submitted by:  
Terrence Gray,  
in his capacity as Acting Director,  
RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

By his attorney,

/s/ Tricia Quest  
Tricia Quest, Esq. (#7362)  
RIDEM Office of Legal Services  
235 Promenade Street, Fourth Floor  
Providence, RI 02908  
(401) 222-6607  
(401) 222-3378 (facsimile)  
tricia.quest@dem.ri.gov